



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

Memphis District Office  
1407 Union Avenue, 9th Floor  
Memphis, TN 38104  
(901) 685-4590  
Website: [www.eeoc.gov](http://www.eeoc.gov)

10/21/2022

**RECEIVED OCT 24 2022**

Malcolm B Futhey, Attorney  
Futhey Law Firm PLC  
1440 Poplar Avenue  
Memphis, TN 38104

RE: [REDACTED] v. Holiday Crown Centre LLC d/b/a Pimento's Kitchen & Market  
EEOC Charge No: [REDACTED]

Dear Ms. [REDACTED]:

This is to acknowledge receipt of the EEOC Charge of Discrimination, which has been filed under the following statute(s):

Title VII of the Civil Rights Act of 1964 (Title VII)

We will contact you when we need more information. A notice of the charge will be sent to the respondent within 10 days of our receipt of the charge as required by our procedures. Many states, counties, cities, and towns have their own laws prohibiting discrimination, as well as agencies responsible for enforcing those laws.

Please use the "EEOC Charge No." listed at the top of this letter whenever you contact us about this charge and notify the Memphis District Office of any change to your address or of any prolonged absence from home. Failure to cooperate in this matter may lead to dismissal of the charge. The quickest and most convenient way to obtain the status of your charge and to submit evidence is to use EEOC's Public Portal. You can access the system via this link <https://publicportal.eeoc.gov>.

Sincerely,

Gilbert Hammond  
CRITU Supervisor  
GILBERT.HAMMOND@EEOC.GOV  
(901) 685-4596

Enclosure(s):

✓ EEOC Brochure, "What You Should Know Before You File A Charge With EEOC."

Exhibit 2



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### WHAT YOU SHOULD KNOW ABOUT FILING AN EEOC CHARGE

#### WHAT DOES THE EEOC DO?

The EEOC is a law enforcement agency that investigates or looks into claims that employers, employment agencies or labor organizations discriminated against employees or applicants because of their race, color, religion, sex (including pregnancy, transgender status, and sexual orientation), national origin, age (40 or older), disability, or genetic information. The EEOC often tries to settle charges with the help of a mediator. Sometimes, the EEOC takes cases to court. The EEOC does not charge a fee to investigate, mediate, or litigate charges. The EEOC also educates the public about job discrimination.

#### HOW TO FILE A CHARGE OF EMPLOYMENT DISCRIMINATION

If you think you have experienced job discrimination, we encourage you to use our Online Public Portal at <https://publicportal.eeoc.gov>. To use the online system, you must have Internet access and an email address. EEOC's Public Portal asks you a few questions to help determine whether EEOC is the right federal agency to handle your complaint. If so, you can then submit an inquiry online and schedule an interview with an EEOC representative to discuss the details of your situation. In our experience, an interview helps individuals make more informed decisions about whether to file a charge. A Charge of Discrimination can be completed through our online system after we interview you. Once a Charge of Discrimination has been signed, you can upload any evidence you have to your case.

You may also file a charge of employment discrimination at the EEOC office closest to where you live or work, or at any one of the EEOC's 53 field offices. Offices may not always be able to interview you on the same day you walk-in. Please check <https://www.eeoc.gov/field/> for information about the walk-in hours of the office closest to you.

#### WHAT IS A CHARGE?

A charge is a signed, written complaint about a job action you believe was based on race, color, religion, sex, national origin, age, disability, or genetic information that asks the EEOC or a state or local government agency with similar laws to take action to remedy the discrimination. You have the right to file a charge of job discrimination to keep your right to file in federal court. After your interview, EEOC will help you prepare your charge and sign it electronically.

#### IS THERE A TIME LIMIT TO FILE A CHARGE?

You have either 180 or 300 days from the day you knew about the job action to file a charge. It depends on whether the employer is located in an area where a state or local government agency has laws similar to the EEOC's laws. We can help you figure out how much time you have. Act quickly to keep your rights by signing and filing a timely charge. Your signed charge is filed when EEOC receives it.

#### WHAT TO DO IF YOU WOULD LIKE ASSISTANCE DURING YOUR INTERVIEW

You can bring your lawyer to your interview, although you don't have to hire a lawyer to file a charge. The EEOC is unable to provide a lawyer for you and cannot pay for the cost of your lawyer. An interview may be conducted via telephone or in-person. If you need an accommodation or assistance during the interview, like an accommodation for a disability, or assistance with a sign language interpreter or another language interpreter, let us know ahead of time so we can arrange for the accommodation or interpreter to be available during the interview.

#### WHAT HAPPENS WHEN YOU FILE A CHARGE?

When you file a charge, the EEOC must give the employer accused of discrimination a copy of the charge, which includes your name and your claims of discrimination. If you contact the EEOC but decide not to file a charge, we will not tell the employer that you contacted us. If you do not file a charge, you will not be able to file suit in federal court based on the laws we enforce, with one exception: individuals with Equal Pay Act (EPA) claims may go to court without filing a charge but must do so within two years of the negative job action. If the EEOC does not have jurisdiction, or if your charge is untimely, we will close the investigation of your charge quickly. We may also close your charge if we decide that it is unlikely we will be able to determine that the law was violated. Then we will give you a notice of your right to file suit in federal court within 90 days. If we do not close your charge quickly, we may send it to mediation or to investigation.

EEOC typically receives about 70,000 charges of discrimination from workers out of more than 700,000 contacts seeking information and assistance every year. Although EEOC is able to address thousands of complaints, the agency cannot remedy every potential violation of the federal discrimination laws. Recognizing this, Congress gave workers the right to file lawsuits in court after first allowing EEOC the opportunity to investigate the charge.

#### WHAT IS MEDIATION?

Before we look into your claims, the EEOC sometimes asks if you and the employer would like to try to settle your case with the help of a mediator. Both you and the employer must agree to mediate for mediation to occur. The mediator does not decide who is right or wrong. Instead, the mediator tries to help you and the employer settle your claims. What you talk about in mediation is private. If you and the employer agree to settle your case, the EEOC will close your case. If you and the employer do not agree to settle your case, we will send your case to investigation.

If your charge is not otherwise resolved, the EEOC will assign an investigator as soon as we can to look into your claims. The investigator is neutral and does not take sides. The investigator may ask you for the names of people who have information about your claims of discrimination and may talk to some or all of them. You should give the investigator anything you have in writing that helps to prove your claims. The investigator will usually ask the employer to tell their side of the story as well and ask for your response. We may also request a written position statement from the employer. If so, you may request to have a copy of the employer's position statement. You will have an opportunity to respond to the position statement.



### CAN YOU FILE A LAWSUIT BEFORE WE FINISH OUR INVESTIGATION?

If you want to file a lawsuit in federal court before we finish our investigation, you may ask us in writing for a notice of your right to sue. If you ask more than 180 days after filing a charge, the law requires us to give it to you. If you ask before 180 days have passed, we can give you the notice only if we cannot finish our investigation within 180 days. In most cases, once we give you a notice of your right to sue, we close the case. If you file an age discrimination charge, however, you can file a suit in court without the notice 60 days after filing a charge. An individual with an EPA claim may go to court directly without filing a charge.

### WHAT HAPPENS AFTER THE INVESTIGATION?

After we finish looking into your claims, we let you and the employer know what we decide. Sometimes, the information is not enough to show that the employer violated the law. In that case, we will dismiss your charge and give you a notice of your right to file suit in federal court within 90 days. If you do not file a suit within 90 days, you will lose your right to sue in court. When the information shows that the employer violated the law, we try to settle the case in conciliation.

### WHAT IS CONCILIATION?

When the EEOC determines that the employer violated the law, we invite you and the employer to try to settle the case. If the EEOC, you, and the employer agree on how to settle your case, we will close the case. If the EEOC, you, and the employer do not agree, we will decide whether to file a lawsuit in federal court or whether to provide you with a notice of your right to sue so that you can file your own lawsuit. You then have 90 days to file suit in federal court.

### WHEN DOES THE EEOC LITIGATE?

In some cases, when the EEOC determines that the employer violated the law and we have been unable to reach a voluntary settlement, we file a lawsuit in federal court. When the EEOC decides whether to file a lawsuit, we look at how serious the violation is, what the legal issues are, and whether other people would benefit from the lawsuit. If we decide not to sue in your case, we will give you a right to sue letter so that you can file your own lawsuit in court. You then have 90 days to file suit.

### IS RETALIATION AGAINST THE LAW?

It is against the law for an employer to retaliate against you because you complained about job discrimination, because you gave evidence in a job discrimination matter, or because you filed a charge of job discrimination with the EEOC. If this happens to you, you should contact us as soon as possible to talk about whether you should file a retaliation charge.

### KEEP US INFORMED

Once you file a charge with the EEOC, you must tell us if you move or get a new phone number or email address. We may need to talk to you to get more information. If the EEOC cannot reach you to get necessary information, your charge may be dismissed.

### KEEP YOUR DOCUMENTS — BOTH PAPER AND ELECTRONIC

If you file a charge, you must keep anything that might be evidence related to your charge. We are required by the courts to ensure that all potentially relevant information is retained. Lost evidence may make it difficult to prove your claim. Keep electronic evidence like text messages, social media posts, photos, emails, voicemails, videos, calendars, and even memory on laptops, tablets and cellphones. Do not delete your computer hard drive, electronic tablet, or cell phone. Do not change or remove Internet posts, without retaining an electronic copy.

Also keep paper evidence like pay stubs, work schedules, employee manuals, letters, memos, your notes, pictures, drawings, charts, and calendars. Even if you are not sure electronic or paper information is relevant to your discrimination claim, please do not delete it or throw it away.

During an investigation, the EEOC will not disclose information that you provide to the public.

### LOOK FOR A JOB IF YOU ARE OUT OF WORK

If you lost your job or were not hired because of job discrimination, you may be able to recover the pay or wages you lost. But you must show that you looked for another job to receive lost wages. To prove you searched for work, you must keep copies of all electronic and paper information, such as applications, resumes, letters, emails, or other evidence of your job search. If you find a new job but it pays less than the job you lost, you may be entitled to the difference in pay. To show the difference in pay, you must keep electronic and paper evidence such as offer letters, pay stubs, and work schedules. Keep all evidence of your job search even if you find another job.

### DO YOU HAVE MORE QUESTIONS?

You can find the answers to many of your questions on our website, [www.eeoc.gov](http://www.eeoc.gov), including whether the EEOC is the right agency to assist you. For more information about filing a charge, see [www.eeoc.gov/filing-charge-discrimination](http://www.eeoc.gov/filing-charge-discrimination). For more information about wage claims, [www.eeoc.gov/equal-paycompensation-discrimination](http://www.eeoc.gov/equal-paycompensation-discrimination).

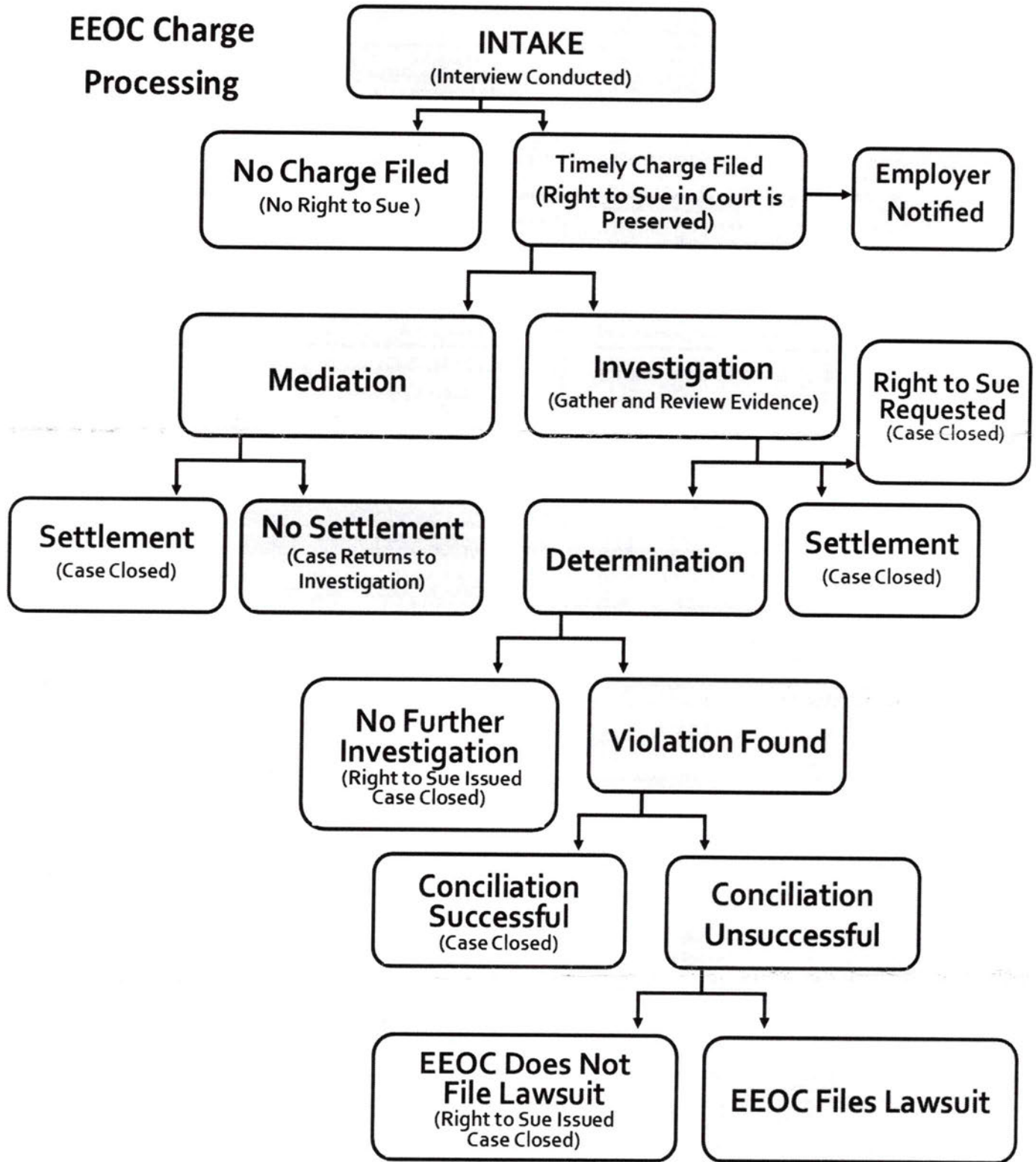
### DON'T MISS THE FILING DEADLINE

Go to our Online Public Portal at  
<https://publicportal.eeoc.gov>

or call 1-800-669-4000 (Voice), or use our sign language  
access line 1-844-234-5122 (ASL Video Phone)

[www.eeoc.gov](http://www.eeoc.gov)

## EEOC Charge Processing



Yellow = Charge Process Ends

Blue = Charge Process Continues



EEOC Form 5 (11/09)

# CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA  
☒ EEOC

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Home Phone (Incl. Area Code)

Date of Birth

Street Address

City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two are named, list under PARTICULARS below.)

Name  
Holiday Crown Centre, LLC d/b/a Pimento's Kitchen & Market a/k/a Pimento's Burgers

No. Employees, Members

Phone No. (Incl. Area Code)  
9016025488

Street Address

City, State and ZIP Code

6450 Poplar Avenue, Suite 123, Memphis, Tennessee 38119

Name  
Fred Whitley

No. Employees, Members

Phone No. (Incl. Area Code)  
9017947552

Street Address

City, State and ZIP Code

5483 Apple Blossom Drive, Memphis, Tennessee 38115

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION  
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest  
06/14/2022  
Latest  
06/14/2022

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s).)

BECAUSE THIS INCIDENT INVOLVES A MINOR AND SEXUAL ASSAULT, THE CLAIMANT REQUESTS THAT HER NAME BE KEPT PRIVATE AND CONFIDENTIAL AND NOT PUBLICLY DISCLOSED.

On or about June 14, 2022, 17-year-old minor, [REDACTED] was working as a waitress at Pimentos (6450 Poplar Avenue, Suite 123) when she was raped and sexually assaulted by Pimentos' 43-year-old manager, Defendant Fred Whitley. On that day, [REDACTED] went into the walk-in freezer. Manager Fred Whitley snuck into the walk-in freezer behind her. Manager Fred Whitley made unwanted sexual advances towards [REDACTED] then directly touched the minor's sexual organs and penetrated her with his fingers. The minor tried to leave the freezer, but Defendant Fred Whitley blocked her escape, thereby imprisoning her in the walk-in freezer. After minor [REDACTED] objected and tried to get him to stop, Fred Whitley eventually did stop sexually assaulting the minor. Later, Fred Whitley allowed her to leave the walk-in freezer. [REDACTED] never consented to Defendant Fred Whitley's sexual assault or battery. Fred Whitley's actions constitute violations of the following criminal statutes:

Tennessee Code Annotated § 39-13-503 – Rape  
Tennessee Code Annotated § 39-13-505 – Sexual Battery  
Tennessee Code Annotated § 39-13-506(b) – Statutory Rape  
Tennessee Code Annotated § 39-13-506(c) – Aggravated Statutory Rape  
Tennessee Code Annotated § 39-13-527 – Sexual Battery by an Authority Figure  
Tennessee Code Annotated § 39-13-527 – Solicitation of person under 18 years of age  
Tennessee Code Annotated § 39-13-532 – Statutory Rape by an Authority Figure

Following the rape and sexual assault, the incident was reported to the Memphis Police. The Memphis Police came to the Restaurant to take a report of the incident. Upon information and belief, the Memphis Police arrested Mr. Whitley.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY – When necessary for State or Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

10/6/22

Date

Charging Party Signature

## CHARGE OF DISCRIMINATION

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Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

RECEIVED

OCT 17 2022

U.S. EEOC  
Memphis District Office  
Memphis, TN

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10/6/22

Date

Charging Party Signature

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I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

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(month, day, year)